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FUJIAN JINHUA INTEGRATED CIRCUIT CO., LTD.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED MICROELECTRONICS
CORPORATION, *et al.*,

Defendants.

CASE NO.: 3:18-cr-00465-MMC

**DEFENDANT FUJIAN JINHUA
INTEGRATED CIRCUIT CO., LTD.'S
NOTICE OF MOTION AND MOTION
FOR ISSUANCE OF A SECOND
LETTER OF REQUEST FOR
INTERNATIONAL JUDICIAL
ASSISTANCE; DECLARATION OF
EMILY REITMEIER; AND
[PROPOSED] ORDER**

Judge: The Honorable Maxine M. Chesney
Trial Date: February 28, 2022

NOTICE OF MOTION AND MOTION

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 23, 2022, or as soon thereafter as the parties may be heard, before the Honorable Maxine M. Chesney, Judge, United States District Court for the Northern District of California, in the San Francisco Division Courthouse, Courtroom 7, 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Fujian Jinhua Integrated Circuit, Co., Ltd. (“Jinhua”) will bring for hearing this Motion for Issuance of a Second Letter of Request for International Judicial Assistance (“Motion”) pursuant to 28 U.S.C. § 1781. Jinhua previously filed a Motion for Issuance of a Letter of Request for International Judicial Assistance (ECF 494), which this court granted on June 15, 2022 (ECF Nos. 497; 503). This Motion is based on this Notice of Motion and Motion, the arguments and authorities cited below, the Declaration of Emily Reitmeier (“Reitmeier Dec.”), the Letter of Request, any evidence or argument presented to the Court at the hearing on this motion, if any, and such other papers, evidence, and arguments as may be submitted to the Court.

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INTRODUCTION

Defendant Fujian Jinhua Integrated Circuit, Co., Ltd. (“Jinhua”) respectfully submits this memorandum in support of Jinhua’s Motion for the Issuance of a Second Letter of Request for International Judicial Assistance to the Appropriate Judicial Authority in the People’s Republic of China (the “PRC”) (the “Letter of Request”).¹ Specifically, Jinhua seeks permission for live, in-person testimony from You Zhenfu (Jeff Yu) and Wu Junsheng who are critical to Jinhua’s ability to present a full defense. The proposed Letter of Request is attached to this Motion as Exhibit A.

FACTUAL BACKGROUND AND ARGUMENT

I. BACKGROUND

The United States alleges that Jinhua violated: (1) 18 U.S.C. § 1831(a)(5), conspiracy to commit economic espionage; (2) 18 U.S.C. § 1832(a)(5), conspiracy to commit theft of trade secrets; and (3) 18 U.S.C. §§ 1831(a)(3) and 2, economic espionage (receiving and possessing stolen trade secrets). In response, Jinhua has exercised its rights to put on a full and complete defense to the Government’s allegations. Critical to Jinhua’s ability to present a defense is its ability to introduce testimony from its employees. At the status conference in this case on June 13, 2022, the Court ordered Jinhua witnesses You Zhenfu (Jeff Yu) and Wu Junsheng to appear in person for trial on Tuesday, June 21, 2022, to testify live in this matter. (ECF 493.) The local branch of the Chinese Ministry of Justice (“MOJ”), however, recently informed Jinhua that authorization must be obtained either through the letters rogatory process or through the Agreement between the Government of the United States of America and the Government of the PRC on Mutual Legal Assistance in Criminal Matters (the “MLAA”) in order for Mr. You and Mr. Wu to testify in person in this trial in the United States. Because the United States has refused to submit an MLAA request, Jinhua requests that the Court issue letters rogatory for the in-person testimony of Messrs. You and Wu.

A. Procedural Background

The Court is aware of the procedural background as recited in Jinhua’s First Motion for a Letter of Request (ECF 494 at 2-4) and Jinhua’s Request Regarding the Potential Exclusion of

¹ The “Letter of Request” is also referred to in this Motion as a “letters rogatory.”

Certain Defense Witnesses (ECF No. 509), but provides the following additional facts for the Court’s consideration. On June 19, 2022, the Fujian Provincial Justice Department (“FJJD”) preliminarily informed Jinhua that the Chinese competent authority believes that approval needs to be obtained through the formal MLAA or letters rogatory process for Jinhua’s witnesses to testify in person in the United States, as well as for remote testimony. (Reitmeier Dec. ¶ 3.) Final confirmation of this was provided on June 20. (*Id.*)

B. Witnesses and Anticipated Testimony

The testimony of You Zhenfu (Jeff Yu) and Wu Junsheng is critical to Jinhua’s defense. The witnesses’ anticipated testimony is summarized below.

1. You Zhenfu (Jeff Yu)

Mr. You is Jinhua’s Head of Human Resources and previously was a director of UMC’s Human Resources Department. (*See* Reitmeier Dec. ¶4.) Jinhua anticipates that he will testify primarily about the “Talent Retention Bonus Program,” including how the program came into existence, who selected the participants, and that Jinhua did not treat the participants as employees from a Human Resources standpoint. (*See id.*) Mr. You also attended the Chinese American Semiconductor Professional Association (“CASPA”) event and tool vendor meetings in October 2016 and can testify about what transpired at those events. (*See id.*)

2. Wu Junsheng

Wu Junsheng is Jinhua’s Finance Director. (*See* Reitmeier Dec. ¶5.) Jinhua anticipates that he will testify primarily about the “Talent Retention Bonus Program,” and that Jinhua did not treat the individuals in that program as employees from a financial standpoint. (*See id.*) He will also testify why Jinhua signed labor contracts with these individuals. (*See id.*)

* * * * *

As explained above, and in more detail below, the testimony of these witnesses is critical to Jinhua’s defense, and is a proper subject of the letters rogatory process.

II. ARGUMENT

Letters rogatory are formal written letters of request sent by a domestic court to a foreign court asking that a witness residing within that foreign court’s jurisdiction provide evidence—in the

1 form of documents or testimony—for use in a pending action before the requesting court. *See Intel*
 2 *Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 n.1 (2004) (“[A] letter rogatory is the
 3 request by a domestic court to a foreign court to take evidence from a certain witness.”) (alteration
 4 in original) (quoting Jones, *Int’l Judicial Assistance: Procedural Chaos and a Program for Reform*,
 5 62 Yale L.J. 515, 519 (1953)); *see also Asis Internet Servs. v. Optin Global, Inc.*, 2007 WL 1880369,
 6 at *3 (N.D. Cal. June 29, 2007). “In the United States, Congress has empowered federal courts to
 7 issue and to enforce letters rogatory.” *Lantheus Med. Imaging, Inc. v. Zurich Am. Ins. Co.*, 841 F.
 8 Supp. 2d 769, 776 (S.D.N.Y. 2012); *see also Asis Internet Servs.*, 2007 WL 1880369, at *3.
 9 Specifically, 28 U.S.C. § 1781(b)(2) expressly “authorize[s] federal courts to issue letters rogatory
 10 that enable a U.S. litigant to obtain non-party discovery from a foreign entity.” *Lantheus*, 841 F.
 11 Supp. 2d at 776. Once a district court issues and transmits a letter of request to a foreign tribunal,
 12 the foreign tribunal will enforce the letter of request pursuant to its own laws or through treaties with
 13 the United States. *See id.* at 777.

14 The power of a federal court to issue a letter rogatory “extends to requests from criminal
 15 defendants for international assistance to gather evidence in support of their defense.” *United States*
 16 *v. Wedding*, 2009 WL 1329146, at *1 (S.D. Cal. May 13, 2009) (citing *United States v. Mejia*, 448
 17 F.3d 436 (D.C. Cir. 2006)). While the Federal Rules of Criminal Procedure do not offer explicit
 18 guidance on issuing a request for judicial assistance, Rule 57 permits a judge to “regulate practice in
 19 any manner consistent with federal law, these rules, and the local rules of the district.” *Wedding*
 20 2009 WL 1329146, at 1. Moreover, the U.S. Department of State explicitly references letters rogatory
 21 as the proper mechanism for defendants to obtain discovery from the PRC in a criminal matter.²

22 The International Criminal Judicial Assistance Law of the People’s Republic of China
 23 (“ICJAL”) provides that “. . . institutions, organizations and individuals within the territory of the
 24 People’s Republic of China” must obtain “consent of the competent authority of the People’s
 25 Republic of China” in order to provide “evidence materials and assistance provided in this Law to
 26

27 ²U.S. Department of State – Bureau of Consular Affairs, China
 28 People’s Republic of China, <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html> (last visited June 13, 2022)

foreign countries.” (ECF 454-1 at 13, ¶ 4.) The Chinese government has not implemented or issued any rules that provide guidance to applicants on the specific process they must follow to comply with the law, but, as indicated recently by the Chinese competent authority, one manner of complying with the ICJAL is to obtain a letters rogatory. The ICJAL covers general “evidence materials,” which includes a request for a witness to testify in person in the United States.

In addition, in the civil context, “courts apply the discovery principles contained in Rule 26” when considering a request for international judicial assistance. *Lantheus*, 841 F. Supp. at 776. Under the broad standards of Rule 26, “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). Thus, “the burden of persuading the Court” in seeking “issu[ance] [of] a Letter of Request” is “not great,” *Eli Lilly & Co. v. Teva Parenteral Medicines, Inc.*, 2013 WL 12291616, at *3 (S.D. Ind. Apr. 26, 2013), and “[c]ourts routinely issue letters rogatory where the movant makes a reasonable showing that the evidence sought may be material, or may lead to the discovery of material evidence,” *Viasat, Inc. v. Space Sys./Loral, Inc.*, 2013 WL 12061801, at *3 (S.D. Cal. Jan. 14, 2013). Indeed, issuing “discovery through the use of letters rogatory is consistent with the liberal discovery provisions of Rule 26.” *Id.* Here, because the relevant law authorizes letters rogatory as an appropriate method for obtaining discovery from within the PRC, this Court should be satisfied that the PRC will extend “the full faith and credit to [its] Letter of Request that they would expect [this] Court to extend to theirs.” *In re Potash Antitrust Litig.*, 161 F.R.D. 405, 410 (D. Minn. 1995).

As discussed above, the PRC has indicated in its diplomatic notes that it is open to receive letters rogatory in this case in order to procure the testimony of Jinhua’s witnesses at trial and this Court has already granted a previous request for such a letter. (ECF Nos. 497 503.) Moreover, Jinhua has been informed by the local branch of the Ministry of Justice that such a request is required to obtain the live, in person testimony of Messrs. You and Wu.³

The discovery requested from witnesses located within the PRC in the present Motion is crucial to the claims and defenses asserted in this action. Among other things, these witnesses will

³ In the event that the Court grants Jinhua’s motion and approves the language of Jinhua’s proposed letter rogatory, Jinhua will have the letter and all other necessary papers translated into Chinese.

1 testify about the origins, purpose and scope of the Talent Retention Bonus Program and will testify
 2 that the participants in the program were never intended to be dual UMC/Jinhua employees. The
 3 witnesses will further testify that He Jianting (JT Ho) never worked at or reported to anyone at
 4 Jinhua and was never considered to be a Jinhua employee.

5 Jinhua's request is narrowly tailored to obtain this relevant information, *i.e.*, it only requests
 6 testimony from a selected few witnesses and does not ask for any documents or other superfluous
 7 information. Moreover, there are no alternative sources for this information, as the witnesses are the
 8 sole possessors of knowledge critical to Jinhua's ability to put forth a full and complete defense. *See*,
 9 *e.g.*, *Lantheus*, 841 F. Supp. 2d at 793-94 (explaining that comity supports granting a request for
 10 letters rogatory when the origination factor is "counterbalance[d]" by the fact that the "the
 11 information cannot be *easily obtained* through alternative means (alternation and emphasis in
 12 original)).⁴

13 Finally, failure to grant Jinhua's request would undermine important interests of the United
 14 States to ensure that the matters in its courts are fully and fairly adjudicated, as Jinhua has a "right
 15 to offer the testimony of witnesses This right is a fundamental element of due process of law."
 16 *Washington v. Texas*, 388 U.S. 14, 19 (1967). A denial of Jinhua's request would deprive it of
 17 important testimony that is material to its defense, and thereby prevent Jinhua from presenting a
 18 complete and robust defense against the charges brought against it.

19 **III. CONCLUSION**

20 For the foregoing reasons, Jinhua respectfully requests that the Court grant Jinhua's Motion
 21 and issue the requested Letter of Request.

22
 23 Dated: June 23, 2022
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27 ⁴ Jinhua has requested an August 1, 2022 response date for the letter rogatory to ensure there is
 28 enough time for the PRC to adequately respond to this request. This is the same date set forth in
 Jinhua's first letter rogatory, which this Court granted. (*See* ECF No. 503.)

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